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In re Application of :  
ANDERSON, et al. :  
Application No.: 09/937,232 :  
Filing Date: 24 September 2001 :  
Attorney Docket No.: P63654USW :  
For: VALVE :  
: NOTIFICATION

The above-identified application is before the PCT Legal Office for consideration of issues arising under 35 U.S.C. 371.

BACKGROUND

On 23 February 2000, applicants filed international application no. PCT/EP00/01444 which claimed a priority date of 24 March 1999. A proper Demand was filed with the International Preliminary Examination Authority prior to the 19th month from the earliest claimed priority date. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, or at midnight on 24 September 2001.

On 24 September 2001, applicants filed a Transmittal Letter for entry into the national stage accompanied, *inter alia*, by: the requisite basic national fee; a copy of the international application; a "Preliminary Amendment Under 35 U.S.C. 111"; and an executed declaration.

On 30 October 2001, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 CFR 1.494 OR 1.495" (Form PCT/DO/EO/903) which set forth a 35 U.S.C. 371 completion date of 24 September 2001.

On 30 July 2002, applicants filed "Petition to Accept an Unintentionally Delayed Priority Claim under 37 C.F.R. 1.78(a)(3)."

DISCUSSION

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). See 37 CFR 1.495(g):

The documents and fees submitted . . . must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371, otherwise the submission will be considered as being made under 35 U.S.C. 111.

In addition, section 1893.03(a), page 1800-114 of the MPEP states that:

If there are any conflicting instructions as to whether the filing is under 35 U.S.C. 111(a) or 35 U.S.C. 371, the application will be accepted as filed under 35 U.S.C. 111(a).

On 24 September 2001, applicant submitted a preliminary amendment entitled "Preliminary Amendment under 35 U.S.C. 111". The reference in the Preliminary Amendment to "35 U.S.C. 111" is inconsistent with an intent to enter the national stage of the PCT under 35 U.S.C. 371. Accordingly, the original papers deposited on 24 September 2001 will be treated as a filing under 35 U.S.C. 111(a). Therefore, the "NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 CFR 1.494 OR 1.495" (Form PCT/DO/EO/903) mailed a 30 October 2001 was mailed in error and is hereby vacated.

### CONCLUSION

The "Notification of Acceptance of Application under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495" (Form PCT/DO/EO/903) mailed 30 October 2001 is hereby VACATED.

The application is being forwarded to the National Stage Processing Division to: 1) remove the Article 20 papers from the applicable file and 2) correct PALM records to show that the present application is not a U.S. national stage application. Thereafter, the application will be forwarded to the Office of Initial Patent Examination for further processing under 35 U.S.C. 111(a), including issuance of a corrected filing receipt, and to forward the application and "Petition to Accept an Unintentionally Delayed Priority Claim under 37 C.F.R. 1.78(a)(3)" present therein to the appropriate office for decision.



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